

1982 WL 189402 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 12, 1982

***1 RE: Clarification of Opinion Request**

Mr. Cary D. Shamblee
Deputy Director
Land Resources Conservation Commission
2221 Devine Street, Suite 222
Columbia, South Carolina 29205

Dear Cary:

This acknowledges receipt of your letter of August 2, 1982, wherein you asked for clarification of a recent opinion issued to your Commission. Your questions are as follows: (1) What is the definition of a navigable stream? (2) What is the definition of a nonnavigable stream?

I have enclosed an opinion which was written by Assistant Attorney General Harry B. Burchstead, Jr. in 1975 which is directly on point and should answer your questions. Mr. Burchstead has clearly and succinctly defined a navigable stream. Of course, any stream which would not fit this definition would be nonnavigable.

I believe that you can see from Mr. Burchstead's opinion that it doesn't take much in order to have a stream declared navigable. Many streams in this State which would not fit the old common law test of commercial travel would fit the new test as enunciated by Mr. Burchstead. I think you should be very careful to point this out to your District Commissioners.

As an additional caveat I should tell you that the federal law has complicated the issue of navigable waters. Each of the federal statutes dealing with the use and protection of water, the generation of power, etc., contains differing definitions of navigable waters. These also tend to go away from the traditional test of susceptibility to commercial travel.

I trust that this, along with Mr. Burchstead's opinion, will suffice to answering your questions. If not, please feel free to contact me.

Sincerely,

Clifford O. Koon, Jr.
Assistant Attorney General

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